

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 900 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SEARLE (INDIA) LTD CO.

Versus

L.B.RAKHOLIA,ASSTT.AGRIOFFICER

Appearance:

MR VP VASHI, with MR AKSHAY H MEHTA for Petitioners
SERVED for Respondent No. 1, 3, 4, 5, 6, 7, 8
MR KP RAVAL, ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 30/01/97

ORAL JUDGEMENT

1. The petitioners have invoked the inherent powers of this Court under section 482 of the Cr.P.C. for quashing and setting aside the Criminal Case No.3467/1991 filed by the Assistant Agriculture Officer, Bhavnagar against the petitioners and others for offence under section 28 of the Insecticides Act, 1968 (hereinafter referred to as the Act of 1968), pending in the Court of

the Chief Judicial Magistrate, Bhavnagar.

2. The petitioner No.1 is a public limited company registered under the Companies Act. The petitioner No.2 was working as a technical officer at the relevant time. The petitioners are manufacturing Dimethoate 30%. In the court of the Chief Judicial Magistrate, Bhavnagar, a complaint has been filed alleging therein that a sample of the product viz. Dimethoate 30% was taken from the dealer known as Kisan Corporation, Bhavnagar on 13th March, 1991. The said sample was sent for analysis to the Pesticide Testing Laboratory at Gandhinagar and on analysis, it was found to contain less active ingredient viz. 24.6 % instead of 30 %.

3. It is contended by Mr V.P.Vashi, learned counsel appearing for the petitioners that it is not in dispute that the expiry date of the product is September 1991 and the summons were issued to attend the Court on 4th February 1992. Thus, the petitioners have been deprived of their legitimate right to get the samples analysed by the Central Pesticide Laboratory. Learned counsel has referred to the provisions of section 22 and 24 of the Act of 1968. Learned counsel has also invited my attention to the unreported decision of this Court rendered in Special Criminal Application No.183/78, decided on 16/17th July 1979. He has also placed reliance on the judgement of the Rajasthan High Court reported in 1995 Cr.L.J. 618 (in case of Hindustan Ciba Geigy Ltd and others vs. State of Rajasthan and others).

4. Mr K.P.Raval, learned A.P.P. submits that, a reading of section 24 clearly shows that there is no right to get the sample analysed by the dealer. In view of this, no right of the petitioners has been infringed. He further submits that the petitioner may raise this contention during the trial.

5. I have carefully considered the rival contentions raised by the parties. In my view, the contentions raised by the learned counsel for the petitioners, are squarely covered by the judgement of Division Bench of this court referred to above. The same view has been taken by the Rajasthan High court in a case reported in 1995 Cr.L.J. 618 (supra). It is held that the word 'accused' used in sub-section (4) of section-24 of the Act is wide and comprehensive and includes the dealer from whom the sample was taken, or the manufacturer or any other person arrayed as accused in criminal complaint. In view of this position of law, there is a

right of the accused to get the sample analysed by the Central Pesticides Laboratory.

6. In the instant case, it is not in dispute that the expiry date of the product is September 1991 and the complaint was admittedly lodged after the expiry date i.e. on 18/12/1991 and the summons were issued to attend the Court on 04/02/1992. In view of this, the petitioners have been deprived of their legitimate right get the sample products examined by the Central Pesticides Laboratory. In view of this, there are no chances of ultimate conviction of the petitioners and therefore, no useful purpose will be served in allowing the further trial of the case. Thus, in my view, this is a fit case to quash the impugned proceedings to prevent the abuse of process of the Court.

7. In the result, this Criminal Misc. Application is allowed. The impugned proceedings in Criminal Complaint No.3467 of 1991 pending in the Court of the Chief Metropolitan Magistrate, at Bhavnagar are hereby quashed and set aside as against the petitioners. Rule made absolute accordingly to the aforesaid extent.

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